IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 357 of 1999

with

CIVIL REVISION APPLICATION No 1183 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAGATSINH UMJI CHAUHAN

Versus

BHATHIBHAI SAVABHAI RABARI

Appearance:

1. Civil Revision Application No. 357 of 1999
   MR JITENDRA M PATEL for Petitioner No. 1
   MR MEHUL SHARAD SHAH for Respondent No. 1
   ..... for Respondent No. 2-37
   MR KL PANDYA, AGP for Respondent No. 38
2. Civil Revision Application No. 1183 of 1999
   MR KL PANDYA, AGP for Petitioner No. 1
   MR MEHUL SHARAD SHAH for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 24/12/2002

ORAL JUDGEMENT

1. These two Revision Applications arise from a common order passed in the same suit by the trial Court, as also from the common order passed in one appeal by the lower appellate Court under Order 43 Rule 1 of the Civil Procedure Code.

2. The applicant in the first Revision is the original defendant No.1 and the applicant in the second Revision is the original defendant No.2 in Regular Civil Suit No. 31 of 1998 filed in the Court of the Civil Judge, Senior Division, Palanpur, by the present opponents No. 1 to 37.

3. In the said suit, the plaintiffs filed Exh. 5 for an injunction restraining the defendants, whereas the 2nd defendant filed a counter application Exh. 44, for an injunction restraining the plaintiff from interfering or disturbing the possession of the 2nd defendant in respect of the disputed land. The trial Court heard both Exh. 5 and 44 together and the plaintiff's application Exh. 5 was rejected and application Exh. 44 filed by the 2nd defendant was granted.

3.1 This was challenged by the plaintiffs by way of an appeal under Order 43 Rule 1 CPC being Civil Misc. Appeal No. 104 of 1998 before the District Court, Banaskantha at Palanpur. The lower appellate Court, after hearing the parties, was pleased to modify the common order passed by the trial Court below Exh.5 and 44. Hence the present Revision Applications, the first having been filed by defendant No.1 and the second Revision by defendant No.2.

4. It is obvious, on a plain reading of the proviso to section 115 CPC, as amended by the Civil Procedure Code (Amendment) Act, 1999, that both the present Revisions are not maintainable.

5. Both the Revision Applications are, therefore, dismissed and rule is discharged with no orders as to costs. Interim relief, if any, stands vacated.

[Y.B. BHATT, J.]

mathew